

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

AUBREY BERNARD LAVENDER,)	
)	
Petitioner,)	
)	
v.)	Case No.: 7:17-cv-1121-AKK-
)	GMB
WARDEN JIMMY THOMAS, <i>et al.</i> ,)	
)	
Respondents.)	

MEMORANDUM OPINION

On May 26, 2020, the magistrate judge entered a report recommending the court dismiss with prejudice Petitioner Aubrey Bernard Lavender's petition for a writ of habeas corpus as untimely. Doc. 9. The magistrate judge advised the parties of their right to file specific written objections within fourteen days. *Id.* Lavender has filed objections to the report and recommendation. Docs. 10, 11.

In his objections, Lavender argues only that he is innocent of attempted murder and acted in self-defense. Docs. 10, 11. Lavender does not address the magistrate judge's conclusion that his petition is barred by the one-year period limitation under the Antiterrorism and Effective Death Penalty Act of 1996 and that he is not entitled to statutory or equitable tolling. *Id.* Accordingly, the court **OVERRULES** Lavender's objections.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the court **ADOPTS** the magistrate judge's findings and **ACCEPTS** his recommendation. Lavender's petition for a writ of habeas corpus is due to be dismissed with prejudice as untimely.

This court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing, a "petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), or that "the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotations omitted). The court finds Lavender's claims do not satisfy either standard.

The court will enter a separate Final Judgment.

DONE the 17th day of June, 2020.



ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE